

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File Number EB-02-TP-557
)	
Jhony Desinor)	NAL/Acct. No.200332700008
)	
)	FRN 0007-8795-62

FORFEITURE ORDER

Adopted: July 27, 2004**Released: July 29, 2004**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“Order”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Jhony Desinor for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ The noted violations involve Mr. Desinor’s operation of an FM broadcast station on the frequency 105.9 MHz without Commission authorization.

2. On November 18, 2002, the Commission’s Tampa, Florida, Field Office (“Tampa Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Mr. Desinor for a forfeiture in the amount of ten thousand dollars (\$10,000).² Mr. Desinor responded to the NAL on December 18, 2002.

II. BACKGROUND

3. On July 2, 2002, the Tampa Office received a complaint alleging that an unauthorized radio station was being operated from a residence located at 4073 Coconut Circle North in Naples, Florida. Agents from the Tampa Office investigated the complaint on July 16, 2002. The agents observed an FM broadcast station operating on frequency 105.9 MHz and, using direction-finding techniques, traced the station’s signal to an antenna located at 4073 Coconut Circle North, Naples, Florida. The agents determined on the basis of field strength measurements that a Commission authorization was required to operate that station.³ Later on the same day the agents again observed an FM broadcast station operating

¹ 47 U.S.C. § 301.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332700008 (Enf. Bur., Tampa Office, released November 18, 2002).

³ See 47 C.F.R. § 15.239(b).

on frequency 105.9 MHz and, using direction-finding techniques, traced its signal to the antenna located at 4073 Coconut Circle North, Naples, Florida. Shortly after these observations the agents inspected the station and observed Mr. Desinor talking into the microphone. The agents asked Mr. Desinor whether he had a license to operate the radio station; Mr. Desinor replied that he did not have a license.⁴ At the agents' request, Mr. Desinor deactivated the station's transmitter.

4. On November 18, 2002, the Commission's Tampa, Florida, Field Office ("Tampa Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to Mr. Desinor for a forfeiture in the amount of ten thousand dollars (\$10,000). In his response, filed December 18, 2002, Mr. Desinor admits that he was a disc jockey at the station located at 4073 Coconut Circle North, Naples, Florida, and provides a roster indicating that he was one of the station's operators. However, Mr. Desinor asserts that he "was not the owner and operator" of that station; that he "never knew the radio was functioning illegally"; that he did not receive any financial benefit from the operation of the station; that the "owner and operator" of the station is "free of charge"; and that he cannot pay the proposed forfeiture.

III. DISCUSSION

5. The proposed forfeiture amount in this case is being assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). Section 503(b) of the Act requires that the Commission, in examining Mr. Desinor's response, take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷

6. Section 301 of the Act prohibits unauthorized radio operation: "No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."⁸ Mr. Desinor does not deny that the radio station he was operating did not have a license. Mr. Desinor contends, however, that he was invited to host a show at the radio station and that he functioned as one of a group of volunteers who were disk jockeys and hosts. Mr. Desinor further argues that he is not responsible for the illegal operation of the station because he was not "the owner and operator" of that station and did not receive any revenues from the operation of the station. Regardless of whether Mr. Desinor is the station's "owner," it is undisputed that, at the time of the inspection, he was the station's *actual* operator and was in charge of the station. Mr. Desinor, therefore, was responsible for its operation

⁴ The Commission's license records indicated that there was no license covering the operation of the station located at 4073 Coconut Circle North, Naples, Florida.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 301.

in violation of Section 301 of the Act at the time of the inspection. Accordingly, we find that Mr. Desinor violated Section 301 of the Act.

7. Mr. Desinor's claim that he did not know the station was operating illegally indicates that he may not have intended to violate Section 301 of the Act but does not negate the willfulness of the violation.⁹ Mr. Desinor, however, stated to the FCC agents that he did not have a license to operate the station. Further, Mr. Desinor does not deny that he was the operator of the station when the FCC inspected it. As the operator of the unlicensed station and the person in charge, Mr. Desinor acted consciously and deliberately. We, therefore, conclude that Mr. Desinor willfully violated Section 301 of the Act.¹⁰

8. Finally, Mr. Desinor contends that he cannot pay the proposed forfeiture amount but has submitted no financial documentation to support this claim. As stated in the *NAL*, the Commission will not consider reducing or canceling a forfeiture on the basis of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.

9. We have examined Mr. Desinor's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Mr. Desinor willfully violated Sections 301 of the Act and find no basis for cancellation or reduction of the proposed \$10,000 monetary forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ Mr. Desinor **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully violating Section 301 of the Act.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332700008 and FRN

⁹ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, *supra*.

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

0007-8795-62. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Jhony Desinor at 1306 Wildwood Lakes Boulevard, Apt. 6, Nalpes, FL 34104.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹³ See 47 C.F.R. § 1.1914.